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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,085	11/04/2003	Michael Blane Dabney	952663-325966	4427
24239	7590	07/28/2008	EXAMINER	
MOORE & VAN ALLEN PLLC			ANDERSON, FOLASHADE	
P.O. BOX 13706				
Research Triangle Park, NC 27709			ART UNIT	PAPER NUMBER
			3623	
			MAIL DATE	DELIVERY MODE
			07/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/701,085	DABNEY ET AL.	
	Examiner	Art Unit	
	FOLASHADE ANDERSON	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 May 2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) 9-20 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>2/9/06</u> .	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

1. This is the first non-final office action in response to Applicant's submission filed on May 23, 2008. Currently, claims 1-20 are pending. Claims 1-8 have been elected for examination and 9-20 have been withdrawn.
2. The information disclosure statement (IDS) submitted on February 9, 2004 was considered by the Examiner in the prosecution of the claims in the instant application.

Election/Restrictions

3. Applicant's election of group I, claims 1-8, in the reply filed on May 23, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Priority

4. The Examiner has determined that the specification of US Patent 6,643,663 does not provide adequate support under 35 U.S.C. 112 to enable one of ordinary skill in the art at the time the invention was made to perform claims 1-8. Therefore for the purpose examination claims 1-8 will not be given the benefit of the filling date of US Patent 6,643,663 and will be examined with respect to an effective filing date of 11/04/2003, see MPEP 706.02 (B).

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-8 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be performed without the use of a particular apparatus. Thus, claims 1-8 are non-statutory since they may be performed within the human mind.

Additionally, claim 1, the limitation, "**if escalation is needed, to a personnel responsible for said published content in order to close a loop between said**

personnel responsible for said published content and said consumer” as recited is an open-ended conditional statement. The use of open-ended conditional language would not render the entire claim useful, tangible or concrete. The language presented only makes allowances for when routing when escalation is needed. There is no allowance made in the event that escalation is not needed. Therefore, as the claim is currently presented, it could be possible that there would be no action by the program if escalation is not needed. In this case, there would be no concrete, tangible or useful outcome in the case. Thus, the claim is directed to non-statutory material.

Claims 2-8 depend from claim 1 and therefore suffer the same deficiency as such are rejected for the same reasoning given above.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Island Data (www.islanddata.com, published 09/24/2002).

[Claim 1] Island Data teaches **a method of managing consumer feedback in an electronic content management system, comprising:**

- **receiving feedback from a consumer regarding published content** (pg. 4, Express Response receives internet-based customer queries from all online channels, including web forms, email, FAQ, chat and newsgroups, where the online channels are old and well known means for presenting feedback);
- **storing said feedback** (pg. 5, QPS takes an unstructured customer inquiry, such as email, and builds it into a structured data record in real-time, where the act of recording is an old and well known equivalent of storing);
- **sending a response message to said consumer in response to said feedback** (pg. 5, automatically respond with the most relevant information);
- **determining whether escalation of said feedback is needed** (pg.4, Inquiries that cannot be answered effectively from the knowledgebase can be immediately escalated); **and**

- **routing said feedback, if escalation is needed, to a personnel responsible for said published content in order to close a loop between said personnel responsible for said published content and said consumer** (pg. 5, escalate the request to the appropriate human agent, where the routing is inherent in that the feedback is moved from the automated answering to the manual answering)

Further regarding claim 1, which recites the limitation of “**from a consumer regarding published content” and “to a personnel responsible for said published content in order to close a loop between said personnel responsible for said published content and said consumer**” these limitations are being interpreted by the Examiner as a statement of intended use. As such the limitation is not given any patentable weight in keeping with the guidelines of MPEP 7.37.09: a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

[Claim 4] This claim, **the method according to claim 1, further comprising routing said feedback to a corporate wide help desk**, is substantially similar to claim 1, in that the feedback is routed to a specific location/individual. The Examiner holds that the actual location/individual that receives the feedback is irrelevant since the act of receiving has no bearing on the functionality of the claim, the step of routing, which is preformed in the same manner regardless of the location/individual that receives the

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feedback. Therefore this claim is rejected for the same reasons given with regard to claim 1.

[Claim 6] Island Data teaches **the method according to claim 1, wherein said response message includes one or more predefined responses that are selected based on said feedback** (pg. 2 identifying reusable knowledge and pg. 4 Express Response generates relevant, useable response to the end user from the knowledgebase, where predefined responses is the equivalent of reusable knowledge).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Island Data (www.islanddata.com, published 09/24/2002) in view of Pendakur (US Publication 2004/0073924 A1)

[Claim 2] Island Data teaches a fully closed loop solution (pg. 1), capable of being integrated with existing applications and processes (pg. 1), highly configurable application that provides visitors to your website with multiple options for support (pg. 1) and an administration portal (pg. 10).

Island Data does not expressly teach **the method according to claim 1, wherein said step of routing said feedback includes forwarding said feedback to an originating website.**

However based on the teaching of the Island Data this limitation would have been obvious to one of ordinary skill in the art at the time the invention was made since the prior art was capable of being integrated in to an application, for example a website, it is reasonable to assume that once a user sends feedback via the invention of Island Data it is sent/forward to the website to which it is integrated.

Pendakur teaches the **step of routing said feedback includes forwarding said feedback to an originating website** (0066) in an analogous art for the purpose of broadcast scheduling and content selection.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the routing of feedback to the originating website. As evidenced by Pendakur it is within the capabilities of one of ordinary skill in the art to route feedback to the originating website in the invention of Island Data with to result in the routing of feedback to the originating website as needed in Island Data.

[Claim 3] This claim, **the method according to claim 2, wherein said step of forwarding said feedback to an originating website includes forwarding said feedback to a particular section within said originating website**, is substantially similar to claim 2, in that the feedback is routed to a specific location/individual. The Examiner holds that the actual location/individual that receives the feedback is irrelevant since the act of receiving has no bearing on the functionality of the claim, the step of forwarding, which is preformed in the same manner regardless of the location/individual that receives the feedback. Therefore this claim is rejected for the same reasons given with regard to claim 2.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Island Data (www.islanddata.com, published 09/24/2002) in view of Gardenswartz et al (US Patent 6,055,573).

[Claim 5] Island Data teaches **receiving said feedback** (p.4). Island Data does not expressly teach **the method according to claim 1, further comprising monitoring a content accessing activity of said consumer upon receiving said feedback in order to track a consumption pattern of said consumer.**

However tracking a consumer's consumption patterns are very old and well known in the art, as evidenced by Gardenswartz. Gardenswartz teaches **monitoring a content accessing activity in order to track a consumption pattern of said consumer** (col. 2, lines 23-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the invention of Island Data the **monitoring a content accessing activity in order to track a consumption pattern of said consumer** as taught by Gardenswartz since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Island Data (www.islanddata.com, published 09/24/2002)

[Claim 7] Island Data teaches **the method according to claim 1, further comprising repeating said steps of storing, sending, determining, and routing** (pg. 2 and pg.5, figure). Where it has been held that duplication (repeating) of effort has no

patentable significance unless new and unexpected result is produced, In re Harza, 124 USPQ 378 (CCPA 1960)

Island Data does not expressly **receiving a reply message from said consumer in reply to said response message**; however it was old and well known capability in the art at the time the invention was made to allow one to respond to given information.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the invention of Island Data the **receiving a reply message from said consumer in reply to said response message** as taught by the old and well known capability since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Island Data (www.islanddata.com, published 09/24/2002) in view of Matthews et al (US Patent 6,865,268)

[Claim 8] Island Data teaches session history which maintains throughout the escalation process which provides comprehensive view of each customer interaction (pg.11) Island Data is silent on how the session histories are maintained and tracked. As such Island Data is also silent on **the method according to claim 1, further**

comprising opening a ticket including a tracking number for said ticket upon receiving said feedback, and closing said ticket after said feedback is routed to said personnel.

Matthews teaches **opening a ticket including a tracking number for said ticket upon receiving said feedback** (figure 8, # 70), **and closing said ticket after said feedback is routed to said personnel** (figure 8, #58).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the invention of Island Data the **opening a ticket including a tracking number for said ticket upon receiving said feedback, and closing said ticket after said feedback is routed to said personnel** as taught by Matthews since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Slater et al (US Patent 6,526,404 B1) teaches question and answer system and Pasquale et al (US Publication 2004/0230438 A1) teaches a system for automated customer feedback.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FOLASHADE ANDERSON whose telephone number is (571)270-3331. The examiner can normally be reached on Monday through Thursday 8:00 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Folashade Anderson/
Examiner, Art Unit 3623

/Andre Boyce/
Primary Examiner, Art Unit 3623

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